

(3) If an association of employers files the application, the association shall identify and submit documents to verify whether, in accordance with the definitions at § 655.200, it is: (i) The employer, (ii) a joint employer with its member employers, or (iii) the agent of its employer members.

(b) Every temporary labor certification application shall include:

(1) A copy of the job offer which will be used by the employer (or each employer) for the recruitment of both U.S. and foreign workers. The job offer for each employer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of §§ 655.202 and 653.108 of this chapter;

(2) The assurances required by § 655.203; and

(3) The specific estimated date of need of workers.

(c) The entire temporary labor certification application shall be filed with the local office in duplicate and in sufficient time to allow the State agency to attempt to recruit U.S. workers locally and through the Employment Service intrastate and interstate clearance system for 60 calendar days prior to the estimated date of need. Section 655.206 requires the RA to grant or deny the temporary labor certification application by the end of the 60 calendar days, or 20 days from the estimated date of need, whichever is later. That section also requires the RA to offer employers an expedited administrative-judicial review in cases of denials of the temporary labor certification applications. Following an administrative-judicial review, the employer has a right to contest any denial before the INS pursuant to 8 CFR 214.2(h)(3)(i). Finally, employers need time, after the temporary labor certification determination, to complete the process for bringing foreign workers into the United States, or to bring an appeal of a denial of an application for the labor certification. Therefore, employers should file their temporary labor certification applications at least 80 days before the estimated date of need specified in the application.

(d) Applications may be amended at any time prior to RA determination to

increase the number of workers requested in the original application for labor certification by not more than 15 percent without requiring an additional recruitment period for U.S. workers. Requests for increases beyond 15 percent may be approved only when it is determined that, based on past experience, the need for additional workers could not be foreseen and that a critical need for the workers would exist prior to the expiration of an additional recruitment period.

(e) If a temporary labor certification application, or any part thereof, does not satisfy the time requirements specified in paragraph (c) of this section, and if the exception in paragraph (d) of this section does not apply, the local office shall immediately send both copies directly to the appropriate Regional Administrator (RA). The RA may then advise the employer and the INS in writing that the temporary labor certification cannot be granted because, pursuant to the regulations at paragraph (c) of this section, there is not sufficient time to test the availability of U.S. workers. The notice of denial to the employer shall inform the employer of the right to administrative-judicial review and to ultimately petition INS for the admission of the aliens. In emergency situations, however, the RA may waive the time period specified in this section on behalf of employers who have not made use of temporary alien workers for the prior year's harvest or for other good and substantial cause, provided the RA has sufficient labor market information to make the labor certification determinations required by 8 CFR 214.2(h)(3)(i).

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[43 FR 10313, Mar. 10, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

§ 655.202 Contents of job offers.

(a) So that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers, each employer's job offer to U.S. workers must offer U.S. workers at least the same benefits which the employer is offering, intends to offer, or will afford, to temporary foreign workers. Conversely, no job

offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's foreign workers. For example, if the employer intends to advance transportation costs to foreign workers either directly or indirectly (by having them paid by the foreign government involved), the employer must offer to advance the transportation costs of U.S. workers.

(b) Except when higher benefits, wages or working conditions are required by the provisions of paragraph (a) of this section, the Administrator has determined that, in order to protect similarly employed U.S. workers from adverse effect with respect to wages and working conditions, every job offer for U.S. workers must always include the following minimal benefit, wage, and working condition provisions:

(1) The employer will provide the worker with housing without charge to the worker. The housing will meet the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at part 654, subpart E of this chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines. When it is the prevailing practice in the area of intended employment to provide family housing, the employer will provide such housing to such workers.

(2) (i) If the job opportunity is covered by the State workers' compensation law, the worker will be eligible for workers' compensation for injury and disease arising out of and in the course of worker's employment; or

(ii) If the job opportunity is not covered by the State workers' compensation law, the employer will provide at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment;

(3) The employer will provide without cost to the worker all tools, supplies and equipment required to perform the duties assigned and, if any of these

items are provided by the worker, the employer will reimburse the worker for the cost of those so provided;

(4) The employer will provide the worker with three meals a day, except that where under prevailing practice or longstanding arrangement at the establishment workers prepare their meals, employers need furnish only free and convenient cooking and kitchen facilities. Where the employer provides the meals, the job offer shall state the cost to the worker for such meals. Until a new amount is set pursuant to this paragraph (b)(4), the cost shall not be more than \$4.94 per day unless the RA has approved a higher cost pursuant to § 655.211 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the Administrator in the FEDERAL REGISTER.

(5) (i) The employer will provide or pay for the worker's transportation and daily subsistence from the place, from which the worker, without intervening employment, will come to work for the employer, to the place of employment, subject to the deductions allowed by paragraph (b)(13) of this section. The amount of the daily subsistence payment shall be at least as much as the amount the employer will charge the worker for providing the worker with three meals a day during employment;

(ii) If the worker completes the work contract period, the employer will provide or pay for the worker's transportation and daily subsistence from the place of employment to the place, from which the worker, without intervening employment, came to work for the employer, unless the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite; and

(iii) The employer will provide transportation between the worker's living

quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations;

(6) (i) The employer guarantees to offer the worker employment for at least three-fourths of the workdays of the total period during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the termination date specified in the work contract, or in its extensions if any. For purposes of this paragraph, a workday shall mean any period consisting of 8 hours of work time. An employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays. The work must be offered for at least three-fourths of the 8 hour workdays. (That is, $\frac{3}{4} \times (\text{number of days} \times 8 \text{ hours})$.) Therefore, if, for example, the contract contains 20 workdays, the worker must be offered employment for 120 hours during the 20 workdays. A worker may be offered more than 8 hours of work on a single workday. For purposes of meeting the guarantee, however, the worker may not be required to work for more than 8 hours per workday, or on the worker's Sabbath or Federal holidays;

(ii) If the worker will be paid on a piece rate basis, the employer will use the worker's average hourly earnings to calculate the amount due under the guarantee; and

(iii) Any hours which the worker fails to work when the worker has been offered an opportunity to do so pursuant to paragraph (b)(6)(i) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday, or on the worker's Sabbath or Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met;

(7) (i) The employer will keep accurate and adequate records with respect to the workers' earnings, including field tally records, supporting summary payroll records, and records showing: The nature and amount of the work performed; the number of hours of work offered each day by the em-

ployer (broken out by hours offered both in accordance with, and over and above, the guarantee); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay; the worker's earnings per pay period; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the guarantee, the records will state the reason or reasons therefor;

(iii) The records, including field tally records and supporting summary payroll records, will be made available for inspection and copying by representatives of the Secretary of Labor, and by the worker and the worker's representatives; and

(iv) The employer will retain the records for not less than three years after the completion of the contract;

(8) The employer will furnish to the worker at or before each payday, in one or more written statements:

(i) The worker's total earnings for the pay period;

(ii) The worker's hourly rate or piece rate of pay;

(iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with, and over and above, the guarantee);

(iv) The hours actually worked by the worker;

(v) An itemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily;

(9) (i) If the worker will be paid by the hour, the employer will pay the worker at least the adverse effect rate; or

(ii)(A) If the worker will be paid on a piece rate basis, and the piece rate does not result at the end of the pay period in average hourly earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the adverse effect rate, the worker's pay will be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the adverse effect rate.

(B) If the employer who pays on a piece rate basis requires one or more minimum productivity standards of workers as a condition of job retention, (1) such standards shall be no more than those applied by the employer in 1977, unless the RA approves a higher minimum; or (2) if the employer first applied for temporary labor certification after 1977, such standards shall be no more than those normally required (at the time of that first application) by other employers for the activity in the area of intended employment, unless the RA approves a higher minimum.

(10) The frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least bi-weekly whichever is more frequent);

(11) If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section;

(12) If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire or other Act of God which makes the fulfillment of the contract impossible, and the RA so certifies, the employer may terminate the work contract. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the worker (i) will be returned to the place from which the worker, without intervening employment, came to work for the employer at the employer's expense; and

(ii) Will be reimbursed the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment borne directly or indirectly by the employer;

(13) The employer will make those deductions from the worker's paycheck which are required by law. The job

offer shall specify all deductions, not required by law, which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer; in such cases, however, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period; and

(14) The employer will provide the worker a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section.

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§ 655.203 Assurances.

As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:

(a) The job opportunity is not:

(1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or

(2) At issue in a labor dispute involving a work stoppage;

(b) During the period for which the temporary labor certification is granted, the employer will comply with applicable Federal, State and local employment-related laws, including employment related health and safety laws;

(c) The job opportunity is open to all qualified U.S. workers without regard to race, color, national origin, sex, or religion, and is open to U.S. workers with handicaps who are qualified to perform the work. No U.S. worker will be rejected for employment for other than a lawful job related reason;

(d) The employer will cooperate with the employment service system in the active recruitment of U.S. workers until the foreign workers have departed for the employer's place of employment by;